Supreme Court, U. S.
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No. 79-2033

In The

Supreme Court of the United States

OCTOBER TERM, 1979

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CAROL C. WOODWARD, as Administrator of the Estate of CHARLES C. WOODWARD, Deceased, and CAROL C. WOODWARD, Individually,

Appellant,

vs.

BURNHAM CITY HOSPITAL, a corporation, and GEORGE GREEN, and STAN J. BOBOWSKI,

Appellees.

—o—

On Appeal from the Supreme Court of Illinois

—o—

MOTION TO DISMISS OR AFFIRM

—o—

STEPHEN M. O'BYRNE
RENO, O'BYRNE & KEPLEY
501 West Church Street
Champaign, IL 61820
Attorney for Appellee
Burnham City Hospital

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

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MOTION TO DISMISS

BURNHAM CITY HOSPITAL, Appellee, moves to dismiss the appeal in the above-entitled cause for the reason that no substantial federal question is involved and that the judgment appealed from rests on an adequate non-federal basis.

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ARGUMENT

The Supreme Court of Illinois reversed a panel of the Appellate Court of the State of Illinois which had found § 22.1 of the Illinois Limitations Act, being Ill. Rev. Stats., 1976, Supp., Ch. 83, par. 22.1, unconstitutional as being violative of Article IV, § 13 of the Illinois Constitution of 1970, prohibiting "special legislation." Section 13 in Article IV of that Constitution provided:

> "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination."

The issue before the Illinois Supreme Court was whether or not § 22.1 of the Limitations Act was special legislation, and in its ruling the Supreme Court found that it did not violate the State Constitution, but rather was a reasonable exercise of the State's police power.

This Court has held that a sufficient showing has not been made to give this Court jurisdiction over the judgment of a state court where the record merely discloses that a federal question was argued or presented to the state court. The appellant through her jurisdictional statement must demonstrate that a decision of the state court on the federal question is necessary to the determination of the cause and that such question was actually decided or that the judgment appealed from could not have been given without a decision on such federal question. *Adams v. Russell,* 229 U. S. 353, 33 S. Ct. 846 (1913); *First National Bank v. Estherville, Iowa,* 215 U. S. 341, 30 S. Ct. 152 (1909), and *Holley v. Lawrence,* 318 U. S. 518, 63 S. Ct. 394 (1943). This court also held that an appeal from a

state court to the Supreme Court of the United States would be dismissed where the decision appealed from was based upon a non-federal ground adequate to support that decision.

In the cause presently before this Court, the issue facing the Illinois Supreme Court was whether § 22.1 violated the State Constitution's prohibition of "special legislation". The state court found that the statute did not violate that prohibition and a review of the state court's opinion demonstrates that its decision was grounded on this non-federal basis and that the federal questions raised were not necessary to the court's decision.

—o—

MOTION TO AFFIRM

BURNHAM CITY HOSPITAL, Appellee, moves to affirm the decision of the Supreme Court of Illinois. That decision was proper and correct and no substantial federal constitutional questions are involved.

—o—

ARGUMENT

I.

Section 22.1 does not restrict any fundamental right requiring the application of either the "strict judicial scrutiny" test or of a "means-scrutiny" test.

Legislative classification has been subjected to the "strict judicial scrutiny" test for equal protection purposes only when the classification restricted a "fundamental right" or the classifications were based on racial or ethnic distinctions. *See, e. g., Griswold v. Connecticut,* 381 U. S. 479 (1965) (marital right to privacy); *Shapiro v. Thompson,* 394 U. S. 618 (1969) (right to travel); *San Antonio Independent School District v. Rodriequez,* 411 U. S. 1, 93 S. Ct. 1278 (1973) (right to public education); *Brown v. Board of Education,* 347 U. S 483, 74 S. Ct. 686 (1954) (race); *Graham v. Richardson,* 403 U. S. 365, 91 S. Ct. 1848 (1971) (alienage). Contrary to the Appellant's assertion, § 22.1 does not establish a legislative classification restricting either a fundamental right or is it based on racial or ethnic underpinnings. This Court has never held that the right of access to the Courts in civil cases is a fundamental right. Further, such an argument was rejected in the recent case of *Woods v. Holy Cross Hospital,* 591 F. 2d 1164 (5th Cir., 1979).

Appellant in her jurisdictional statement also suggests that the application of a "means-scrutiny" test is proper. While the Appellant cites the Idaho decision of *Jones v. State Board of Medicine,* 97 Idaho 859, 555 P. 2d 399 (1976), it should be noted that this decision represents a minority position with the majority of courts considering malpractice legislation having either denied the existence of such a test or rejected its application in examining statutes such as § 22.1. *See, e. g., Woods v. Holy Cross Hospital,* 591 F. 2d 1164 (5th Cir., 1979); *Harrison v. Schrader,* — Tenn. —, 569 S. W. 2d 822 (1978).

Since § 22.1 is not addressed to any "fundamental right" or based upon a racial or ethnic classification,

neither the "strict scrutiny" test nor Appellant's suggested "means-scrutiny" test are appropriate in examining this statute for equal protection purposes.

II.

Section 22.1 and the classifications created therein are rationally related to a legitimate state interest.

In its recent decision in *New Orleans v. Dukes,* 427 U. S. 297, 296 S. Ct. 2513 (1976), this Court enunciated the current criteria to be used in analyzing legislative classification in light of the equal protection clause, stating:

> "... our decisions presume the constitutionality of the statutory discrimination and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude. Legislatures may implement their program step by step, *Katzenback v. Morgan,* 384 U. S. 641 (1966), in such economic areas, adopting regulations that only partially ameloriate a perceived evil and deferring complete elimination of the evil to future regulations. *See, e. g., Williamson v. Lee Optical Co.,* 348 U. S. 483, 488-489 (1955). In short, the judiciary may not sit as a super-legislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines. . . . It is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment. See, e. g., *Fergusson v. Skrupa,* 372 U. S. 726, 732 (1963)." *New Orleans v. Dukes,* 96 S. Ct. at 2517.

As this Court noted in *Dukes,* the Appellant's argument at Page 12 of her jurisdictional statement that the

burden of establishing the constitutionality of § 22.1 is upon the State of Illinois, is incorrect. See, also, *Vance v. Bradley,* 440 U. S. —, 99 S. Ct. 939 (1979). Further, neither the State of Illinois nor Appellees are under any burden to provide empirical data establishing the rationality of the classification, rather the burden is upon Appellant to establish the irrationality, if any, of the classifications. See, *Barry v. Barchi,* 441 U. S. —, 99 S. Ct. 2642 (1979).

In examining § 22.1, it is important to consider the legislative history of this provision so as to properly perceive the rationality of the legislature's response to problems created in the medical malpractice field by the Illinois Supreme Court's judicial adoption of the "discovery rule" in personal injury suits.

This history is set out in detail in the opinion of the Illinois Supreme Court in this cause. Prior to the decision in *Lipsey v. Michael Reese Hospital,* 46 Ill. 2d 32, 262 N. E. 2d 450 (1970), actions involving medical malpractice in Illinois were generally governed by the general provisions of the Limitations Act, which was a two-year limitation period calculated from the time of the occurrence of the alleged negligent act. In *Lipsey* the Illinois Supreme Court adopted the "discovery rule" and held that the limitation period would be calculated not from the time of the alleged negligent act, but from the time the plaintiff knew, or through the use of reasonable diligence should have known, of the injury. This rule worked a special hardship in the medical malpractice area as claims were allowed to be brought years, or as in the instant case, more than a decade after the occurrence of the alleged negligent act.

It was in this climate that the Illinois legislature considered and enacted § 22.1. This section reflects a rational compromise on the part of the legislature between the limitation rule applied before *Lipsey* and the discovery rule. The legislation was a rational response to the particular problems caused in the medical malpractice field because of the "long tail of liability" created by *Lipsey*. In enacting § 22.1 the legislature was attempting to protect the vital interests of society in having adequate health care provided at a reasonable cost—an interest recognized in *Wright v. Central DuPage Hospital Association,* 63 Ill. 2d 313, 347 N. E. 2d 736 (1976) (Underwood, J., concurring in part and dissenting in part).

In its opinion in this cause, the Illinois Supreme Court noted that Illinois was not alone in its passage of a special statute of limitations in medical malpractice areas, identifying many states that passed such limitation legislation (see opinion in appendix to appellant's jurisdictional statement, A10-12). The court further noted that a number of these statutes had been challenged on equal protection grounds, and that all of the statutes had been sustained against such an attack (see A13).

Appellant has principally objected to the classification established in § 22.1 affording its protection to doctors and hospitals and not others in the health care field. This Court has repeatedly noted a statutory classification does not violate the equal protection clause merely because the classifications contained therein are imperfect, noting that legislatures may implement their program step by step adopting regulations that only partially ameliorate a perceived evil and defraying complete elimination of the evil

to future regulations. See, *e. g., New Orleans v. Dukes,* 427 U. S. 297 (1976); *Dandridge v. Williams,* 397 U. S. 471 (1970). Statutes establishing classifications within the medical profession have been upheld in the following cases: *State ex rel. Schneider v. Ligget,* 223 Kan. 616, 576 P. 2d 221 (1978); *Sellers v. Edwards,* 289 Ala. 2, 265 So. 2d 438 (1972); *McCarty v. Goldstein,* 376 P. 2d 691 (Col., 1962).

III.

Section 22.1 of the Illinois Limitation Act does not improperly restrict any right or cause of action in violation of the due process clause.

Section 22.1 of the Illinois Limitation Act does not improperly take any property right of the appellant without notice in violation of the due process clause. Section 22.1 as a statute of limitation does not deny appellant any right but merely addresses her remedy and the manner of exercise of that right. This Court has noted the importance of statute of limitations, stating its recent decision in *United States v. Kubrick,* — U. S. —, 100 S. Ct. 352, 357 (1979), that "statutes of limitation . . . are founded and approved in all systems of enlightened jurisprudence."

In discussing such statutes in *Chase Securities Corporation v. Donaldson,* 325 U. S. 304 (1945), this Court stated that:

> "[Statutes of limitation] are by definition arbitrary, and their operation does not discriminate between the just and unjust claim, or the avoidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate."

Chase Securities Corporation v. Donaldson, 325 U. S. at 314.

Courts of review have generally held that in examining a statute of limitation a vital question is one of reasonableness and that such statutes would not be stricken unless the period before the bar becomes effective was so short that it amounts to a virtual denial of the right itself. It is axiomatic that the application of the statute will under proper circumstances foreclose a plaintiff's cause of action. As the Supreme Court of Arkansas, in *Owen v. Wilson,* 266 Ark. 21, 24-25, 537 S. W. 2d 543, 545 (1976), stated:

> "Any statute of limitations will eventually operate to bar a remedy and the time within which a claim should be asserted is a matter of public policy, the determination of which lies almost exclusively in the legislative domain, and the decision of the General Assembly in that regard will not be interfered with by the courts in absence of palpable error in the exercise of the legislative judgment."

In *Owen,* that court upheld a medical malpractice statute of limitations setting an absolute period of six years against an attack that the provision was violative of due process. A similar result was reached by the court in *Landgraff v. Wagner,* 26 Ariz. App. 49, 546 P. 2d 26 (1976). Similar results have been reached in the recent cases of *Dunn v. St. Francis Hospital,* 401 A. 2d 77 (Del., 1979), and *Dun v. Felt,* 379 A. 2d 1140 (Del., 1977).

The Delaware Supreme Court in *St. Francis Hospital* observed:

> "In setting a time limit for inherently unknowable injuries, it must be remembered that a finite cut-off is probably necessary at some point in time regardless

> of the state of patient's knowledge if the policy considerations underlying the statute of limitations are to be vindicated . . . (omitting citations). It is the legislature and not the courts which must determine what the finite period is, and they are constrained only in that the time limit must not be unreasonable."
>
> *Dunn v. St. Francis Hospital,* 401 A. 2d at 81.

The time limit of four years established by the Illinois legislature in § 22.1 is reasonable and adequately affords this appellant due process of law.

CONCLUSION

The classifications established by § 22.1 of the Illinois Limitation Act are rationally related to a legitimate state interest and neither deny appellant equal protection of the law nor due process as guaranteed by the Constitution of the United States of America.

Respectfully submitted,

STEPHEN M. O'BYRNE
RENO, O'BYRNE & KEPLEY

501 West Church Street
Champaign, IL 61820

Attorney for Appellee,
Burnham City Hospital